

SENATE BILL NO. 5

INTRODUCED BY S. KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY IMPLEMENTING A 0.8 PERCENT EMPLOYER PAYROLL TAX AND A 0.32 PERCENT TAX ON EMPLOYEES AND OTHERS; AMENDING SECTION 15-30-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, on June 28, 2002, the Governor issued a call for the Legislature to convene in Special Session beginning August 5, 2002, for the purpose of considering recommendations for an additional \$45 million in expenditure reductions through a combination of reductions in spending, funding switches, and fund transfers; and

WHEREAS, on June 28, 2002, in accordance with section 17-7-140(1)(b), MCA, the Governor directed state agencies to reduce fiscal year 2003 general fund expenditures by \$23.25 million and to execute another \$14.6 million in general fund transfers; and

WHEREAS, it is the intent of the Legislature to eliminate the need to implement the general fund reductions and the proposed recommendations to the Legislature for an additional \$45 million in reductions and fund transfers through the implementation of a payroll tax on employers, employees, sole proprietors, S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [section 2] and this section, the following definitions apply:

(1) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

(2) (a) "Employer" has the meaning set forth in 15-30-201, except as provided in subsection (2)(b).

(b) If the person for whom an individual performs or performed a service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

(3) "Employer's payroll" means all wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31 to all employees for employments covered under 15-30-256.

(4) "Tax" means the employer and employee payroll tax provided for in [section 2].

(5) "Wages" means all remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (5)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection (5)(a)(i), by the employer in the performance of service during the preceding calendar quarter.

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law.

NEW SECTION. Section 2. Employer and employee payroll tax. (1) (a) There is imposed on each employer a payroll tax in an amount equal to 0.8% of the employer's payroll in the preceding calendar quarter for all employments covered under 15-30-256.

(b) There is imposed on each employee, except workers engaged in the rail industry who are under

1 the jurisdiction of the federal railroad administration, United States department of transportation, a payroll tax
2 in an amount equal to 0.32% of the employee's wages in the preceding calendar quarter.

3 (c) There is imposed on each business of a sole proprietor, on each S. corporation shareholder, on each
4 partner of a partnership, and on each member or manager of a limited liability company a payroll tax in an
5 amount equal to 0.32% on the profit of each separate business of a sole proprietor and on the distributive share
6 of ordinary income of each shareholder, partner, or member or manager.

7 (d) A corporate officer of an S. corporation who receives wages as an employee of the corporation shall
8 pay the tax on both the wages and any distributive share of ordinary income at the employee rate. The S.
9 corporation is not liable for the tax on the corporate officer's wages.

10 (e) A corporate officer of a closely held corporation who meets the stock ownership test under section
11 542(a)(2) of the Internal Revenue Code, 26 U.S.C. 542(a)(2), and receives wages as an employee of the
12 corporation is required to pay the payroll tax only on the wages received. The corporation is not liable for the tax
13 on the corporate officer's wages.

14 (f) Each employer shall maintain the records that the department requires concerning the employer
15 payroll tax and the employee payroll tax. The records are subject to inspection by the department and its
16 employees and agents during regular business hours.

17 (g) An employee does not have any right of action against an employer for any money deducted and
18 withheld from the employee's wages and paid to the state in compliance or intended compliance with this
19 section.

20 (h) The employer is liable to the state for any amount of employee payroll taxes, plus interest and
21 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the employee
22 payroll tax required by this section.

23 (i) A sole proprietor, S. corporation shareholder, partner of a partnership, or member or manager of a
24 limited liability company is liable to the state for the payroll tax, plus interest and penalty, when the sole
25 proprietor, shareholder, partner, or member or manager fails to remit to the state the payroll tax required by this
26 section.

27 (2) All collections of the tax must be deposited in the general fund. The tax is in addition to any other
28 tax or fee assessed against persons and employees subject to the tax.

29 (3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax
30 shall:

(i) file a report in the form and containing the information required by the department and pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter; and

(ii) withhold from an employee's wages the employee payroll tax provided for in subsection (1)(b) and pay it to the department.

(b) Tax payments required by this section must be made with the payments remitted pursuant to 15-30-204.

(c) Tax payments due from sole proprietors, S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) All collections of the tax imposed under this section and interest and penalties on the tax must be deposited in the state general fund.

Section 3. Section 15-30-207, MCA, is amended to read:

"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in the form and summarizing information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part of the calendar year and showing the total amount of the federal income tax deducted and withheld from the wages and the total amount of the tax deducted and withheld from the wages under the provisions of 15-30-201 through 15-30-209 and [section 2].

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and additional information return is not required with respect to the wage payments."

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2 NEW SECTION. **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
3 as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to
4 [sections 1 and 2].

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6 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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8 NEW SECTION. **Section 6. Applicability.** [This act] applies to the collection of taxes for the quarter
9 beginning October 1, 2002.

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